

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

K. KAY SHEARIN,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 03-580 JJF
	:	
TIMOTHY W. POOLE,	:	
	:	
Defendant.	:	

K. Kay Shearin, Wilmington, Delaware.

Pro Se Plaintiff.

Bruce C. Herron, Esquire of AKIN & HERRON, P.A., Wilmington,
Delaware.

Attorney for Defendant.

MEMORANDUM OPINION

March 24, 2004

Wilmington, Delaware

Farnan, District Judge.

Presently before the Court is Defendant Timothy Poole's Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(6). (D.I. 14.) For the reasons set forth below, the Court will deny the Motion.

BACKGROUND

Plaintiff initiated the instant lawsuit pursuant to 42 U.S.C. § 1983. Plaintiff alleges that Defendant violated her constitutional rights by trespassing on her property, vandalizing her property, and by bringing charges against her in the Delaware Justice of the Peace Court (the "J.P. Court"). Plaintiff requests the Court to exclude evidence against her at her J.P. Court trial, issue a preliminary and permanent injunction enjoining the Defendant from future violations of her Fourth Amendment rights, and stop the Defendant from abusing judicial process to harass her. Plaintiff additionally requests compensatory and punitive damages.

DISCUSSION

The Defendant filed the instant motion seeking to dismiss Plaintiff's Complaint pursuant to the Rooker-Feldman doctrine. Defendant contends that Plaintiff's Complaint only requests the Court to exclude evidence in her J.P. Court trial. Thus, Defendant contends that her Complaint is barred by Rooker-Feldman because the relief Plaintiff seeks would require the Court to

exercise jurisdiction over claims that are "inextricably intertwined" with State adjudications. Plaintiff responds that she was acquitted in the J.P. Court in August of 2003. Thus, Plaintiff contends that the Rooker-Feldman doctrine does not preclude her from pursuing her malicious prosecution and abuse of process claims.

Defendant filed the instant motion in September of 2003, and therefore, it is likely that the case pending against Plaintiff in the J.P. Court has been resolved. However, Plaintiff's response to Defendant's Motion, other than bald assertions, does not provide the Court with sufficient evidence of the resolution of the J.P. Court case. The Court requires documentary proof that the J.P. Court action is resolved, such as a certified court document or a copy of the court docket.

In these circumstances, the Court will deny Defendant's Motion with leave to renew if the J.P. Court case is not resolved. Said renewed motion will only require a Notice to Renew filed by March 29, 2004. If no Notice to Renew is filed, the parties shall adhere to the Rule 16 Scheduling Order issued by the Court.

An appropriate Order will be entered.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

K. KAY SHEARIN,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 03-580 JJF
	:	
TIMOTHY W. POOLE,	:	
	:	
Defendant.	:	

O R D E R

At Wilmington, this 24th day of March 2004, for the reasons discussed in the Memorandum Opinion issued this date;

NOW THEREFORE, IT IS HEREBY ORDERED that:

- 1) Defendant's Motion For Leave To File A Memorandum Of Points And Authorities In Lieu Of An Opening Brief (D.I. 12) is **GRANTED**.
- 1) Defendant Timothy Poole's Motion To Dismiss Pursuant To Federal Rule of Civil Procedure 12(b)(6) is **DENIED**.
- 2) Plaintiff is granted leave to renew his Motion to Dismiss by filing a Notice To Renew by March 29, 2004.
- 3) If no Notice To Renew is filed by March 29, 2004, the parties shall adhere to the Rule 16 Scheduling Order entered in this case.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE